

***Superseded 5/10/2016***

**77-15-5 Order for hearing -- Stay of other proceedings -- Examinations of defendant -- Scope of examination and report.**

- (1)
  - (a) When a petition is filed pursuant to Section 77-15-3 raising the issue of the defendant's competency to stand trial or when the court raises the issue of the defendant's competency pursuant to Section 77-15-4, the court in which proceedings are pending shall stay all proceedings. If the proceedings are in a court other than the district court in which the petition is filed, the district court shall notify that court of the filing of the petition.
  - (b) The district court in which the petition is filed:
    - (i) shall review the allegations of incompetency;
    - (ii) may hold a limited hearing solely for the purpose of determining the sufficiency of the petition if the court finds the petition is not clearly sufficient on its face;
    - (iii) shall hold a hearing if the petition is opposed by either party;
    - (iv) may not order an examination of the defendant or order a hearing on the mental condition of the defendant unless the court finds that the allegations in the petition raise a bona fide doubt as to the defendant's competency to stand trial; and
    - (v) shall order an examination of the defendant and a hearing on the defendant's mental condition if the court finds that the allegations raise a bona fide doubt as to the defendant's competency to stand trial.
- (2)
  - (a) After the granting of a petition and prior to a full competency hearing, the court may order the Department of Human Services to examine the person and to report to the court concerning the defendant's mental condition.
  - (b) The defendant shall be examined by at least two mental health experts not involved in the current treatment of the defendant.
  - (c) If the issue is sufficiently raised in the petition or if it becomes apparent that the defendant may be incompetent due to mental retardation, at least one expert experienced in mental retardation assessment shall evaluate the defendant. Upon appointment of the experts, the petitioner or other party as directed by the court shall provide information and materials to the examiners relevant to a determination of the defendant's competency and shall provide copies of the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.
  - (d) The prosecuting and defense attorneys shall cooperate in providing the relevant information and materials to the examiners, and the court may make the necessary orders to provide the information listed in Subsection (2)(c) to the examiners. The court may provide in its order for a competency examination of a defendant that custodians of mental health records pertaining to the defendant shall provide those records to the examiners without the need for consent of the defendant or further order of the court.
- (3) During the examination under Subsection (2), unless the court or the executive director of the department directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.
- (4) The experts shall in the conduct of their examination and in their report to the court consider and address, in addition to any other factors determined to be relevant by the experts:
  - (a) the defendant's present capacity to:
    - (i) comprehend and appreciate the charges or allegations against the defendant;
    - (ii) disclose to counsel pertinent facts, events, and states of mind;

- (iii) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
  - (iv) engage in reasoned choice of legal strategies and options;
  - (v) understand the adversary nature of the proceedings against the defendant;
  - (vi) manifest appropriate courtroom behavior; and
  - (vii) testify relevantly, if applicable;
  - (b) the impact of the mental disorder, or mental retardation, if any, on the nature and quality of the defendant's relationship with counsel;
  - (c) if psychoactive medication is currently being administered:
    - (i) whether the medication is necessary to maintain the defendant's competency; and
    - (ii) the effect of the medication, if any, on the defendant's demeanor and affect and ability to participate in the proceedings; and
  - (d) whether the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial.
- (5) If the expert's opinion is that the defendant is incompetent to proceed, the expert shall indicate in the report:
- (a) which of the above factors contributes to the defendant's incompetency;
  - (b) the nature of the defendant's mental disorder or mental retardation and its relationship to the factors contributing to the defendant's incompetency;
  - (c) the treatment or treatments appropriate and available;
  - (d) the defendant's capacity to give informed consent to treatment to restore competency; and
  - (e) any diagnostic instruments, methods, and observations used by the expert to determine whether or not the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial and the expert's opinion as to the significance of any false or exaggerated symptoms regarding the defendant's capacity.
- (6) The experts examining the defendant shall provide an initial report to the court and the prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report shall inform the court of the examiner's opinion concerning the competency of the defendant to stand trial, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the report. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel. The examiner shall provide the report within 60 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.
- (7) Any written report submitted by the experts shall:
- (a) identify the specific matters referred for evaluation;
  - (b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;
  - (c) state the expert's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the expert could not give an opinion; and
  - (d) identify the sources of information used by the expert and present the basis for the expert's clinical findings and opinions.
- (8)
- (a) Any statement made by the defendant in the course of any competency examination, whether the examination is with or without the consent of the defendant, any testimony by the expert based upon the statement, and any other fruits of the statement may not be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting

mental condition on which the defendant has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the defendant's competency.

- (b) Prior to examining the defendant, examiners should specifically advise the defendant of the limits of confidentiality as provided under Subsection (8)(a).

(9)

- (a) When the report is received the court shall set a date for a mental hearing. The hearing shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause.
- (b) Any person or organization directed by the department to conduct the examination may be subpoenaed to testify at the hearing. If the experts are in conflict as to the competency of the defendant, all experts should be called to testify at the hearing if reasonably available. A conflict in the opinions of the experts does not require the appointment of an additional expert unless the court determines the appointment to be necessary.
- (c) The court may call any examiner to testify at the hearing who is not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine the expert.

(10)

- (a) A person shall be presumed competent unless the court, by a preponderance of the evidence, finds the person incompetent to proceed. The burden of proof is upon the proponent of incompetency at the hearing.
- (b) An adjudication of incompetency to proceed does not operate as an adjudication of incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

- (11) In determining the defendant's competency to stand trial, the court shall consider the totality of the circumstances, which may include the testimony of lay witnesses, in addition to the expert testimony, studies, and reports provided under this section.

(12)

- (a) If the court finds the defendant incompetent to stand trial, its order shall contain findings addressing each of the factors in Subsections (4)(a) and (b). The order issued pursuant to Subsection 77-15-6(1) which the court sends to the facility where the defendant is committed or to the person who is responsible for assessing the defendant's progress toward competency shall be provided contemporaneously with the transportation and commitment order of the defendant, unless exigent circumstances require earlier commitment in which case the court shall forward the order within five working days of the order of transportation and commitment of the defendant.
- (b) The order finding the defendant incompetent to stand trial shall be accompanied by:
  - (i) copies of the reports of the experts filed with the court pursuant to the order of examination if not provided previously;
  - (ii) copies of any of the psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the defendant; and
  - (iii) any other documents made available to the court by either the defense or the prosecution, pertaining to the defendant's current or past mental condition.

(13)

- (a) If the court finds it necessary to order the defendant transported prior to the completion of findings and compilation of documents required under Subsection (12), the transportation and commitment order delivering the defendant to the Utah State Hospital, or other mental health facility as directed by the executive director of the Department of Human Services or a designee, shall indicate that the defendant's commitment is based upon a finding of

incompetency, and the mental health facility's copy of the order shall be accompanied by the reports of any experts filed with the court pursuant to the order of examination.

- (b) The executive director of the Department of Human Services or a designee may refuse to accept a defendant as a patient unless the defendant is accompanied by a transportation and commitment order which is accompanied by the reports.
- (14) Upon a finding of incompetency to stand trial by the court, the prosecuting and defense attorneys shall provide information and materials relevant to the defendant's competency to the facility where the defendant is committed or to the person responsible for assessing the defendant's progress towards competency. In addition to any other materials, the prosecuting attorney shall provide:
  - (a) copies of the charging document and supporting affidavits or other documents used in the determination of probable cause;
  - (b) arrest or incident reports prepared by a law enforcement agency pertaining to the charged offense; and
  - (c) information concerning the defendant's known criminal history.
- (15) The court may make any reasonable order to insure compliance with this section.
- (16) Failure to comply with this section does not result in the dismissal of criminal charges.